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MATERIALS FOR:

COMPARATIVE CONSTITUTIONAL LAW AND POLITICS

(LAW 409H-S)

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VOLUME I

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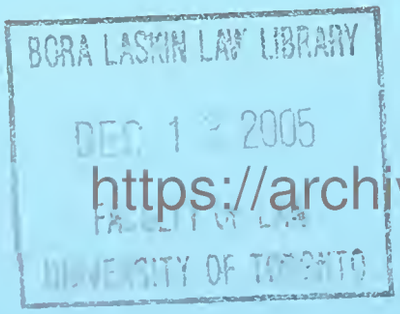

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COMPARATIVE CONSTITUTIONAL LAW AND POLITICS

Professor Ran Hirschl

Basic Terminology (week 2)

1. Ran Hirschl, "Beyond the American Experience: The Global Expansion of Judicial Review," *Marbury v. Madison: Documents and Commentary*, Mark Graber, ed. (Congressional Quarterly, 2002), pp. 129-152.

2. Kim Lane Scheppele, "The Agendas of Comparative Constitutionalism," *Law and Courts* 13 (2003): 5-23.

3. Ran Hirschl, "The Question of Case Selection in Comparative Constitutional Law," *American Journal of Comparative Law* 53 (2005): 125-155.

The Political Construction of Judicial Review (weeks 3-4)

4. Barry Weingast, "The Political Foundations of Democracy and the Rule of Law," *American Political Science Review* 91 (1997): 245-263.

5. Douglas North and Barry Weingast, "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth Century England," *Journal of Economic History* 49 (1989): 803-833.

6. Mark Graber, "The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary," *Studies in American Political Development* 7 (1993): 35-73.

7. Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54 (2000): 217-252.

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9. Ran Hirschl, "The Political Origins of the New Constitutionalism," *Indiana Journal of Global Legal Studies* 11 (2004): 71-108.

10. Ran Hirschl, "'Juristocracy' – Political, not Juridical," *The Good Society* 14 (2004): 6-11.

11. Ran Hirschl, "Constitutional Courts vs. Religious Fundamentalism: Three Middle Eastern Tales," *Texas Law Review* 82 (2004): 1819-1860.

12. Keith Whittington, "'Interpose Your Friendly Hand': Political Supports for the Exercise of Judicial Review by the United States Supreme Court," *American Political Science Review* 99 (2005): 583-596.

Theories of Judicial Behavior (weeks 5-6)

13. Oona Hathaway, "Path Dependence in the Law: The Course and Pattern of Change in a Common Law Legal System," *Iowa Law Review* 86 (2001): 601.

14. Cass Sunstein and Edna Ullmann-Margalit, "Second-Order Decisions," in Cass Sunstein, ed., *Behavioral Law & Economics* (Cambridge University Press, 2000), 187-208.

15. Robert Hillman, "What the Knicks Debacle of '97 Can Teach Students About the Nature of Rules," *Journal of Legal Education* 47 (1997): 393-400.

16. Jeffrey Segal and Harold Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (Cambridge, 2002), pp. 86-103.

17. Forrest Maltzman et al., "Strategy and Judicial Choice: New Institutionalist Approaches to Supreme Court Decision-Making," in C. Clayton and H. Gillman (eds.), *Supreme Court Decision-Making: New Institutionalist Approaches* (University of Chicago Press, 1999), pp. 43-63.

18. Mark Ramseyer and Eric Rasmusen, "Why Are Japanese Judges So Conservative in Politically Charged Cases?" *American Political Science Review* 95 (2001): 331-343.

19. Gretchen Helmke, "The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy," *American Political Science Review* 96 (2002): 291-303.

20. Lee Epstein, Jack Knight, Olga Shvestova, "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government," *Law & Society Review* 35 (2001): 117-163.

21. William Mishler and Reginald Sheehan, "The Supreme Court as Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions," *American Political Science Review* 87 (1993): 87-101.

22. Kevin McGuire and James Stimson, "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences," *Journal of Politics* 66 (2004): 1018-1035.

Constitutional Courts and Public Support (week 7)

23. Gregory Caldeira et al., "The Supreme Court and the U. S. Presidential Election of 2000," *British Journal of Political Science* 33 (2003): 535-556.

24. James Gibson and Gregory Caldeira, "Defenders of Democracy? Legitimacy, Popular Acceptance, and the South African Constitutional Court," *Journal of Politics* 65 (2003): 1-30.

25. Joseph Fletcher and Paul Howe, "Public Opinion and Canada's Courts" in P. Howe and P. Russell, eds., *Judicial Power and Canadian Democracy* (McGill-Queens, 2001), 255-296.

26. Lori Hausegger and Troy Riddell, "The Changing Nature of Public Support for the Supreme Court of Canada," *Canadian Journal of Political Science* 37 (2004): 23-50.

Inter-Court Borrowing (week 8)

27. Sujit Choudhry, "The *Lochner* Era and Comparative Constitutionalism," *International Journal of Constitutional Law* 2 (2004): 1-55.

28. Norman Dorsen, "The Relevance of Foreign Legal Materials in U.S. Constitutional Cases: A Conversation between Justice Antonin Scalia and Justice Stephen Breyer," *International Journal of Constitutional Law* 3 (2005): 519-541.

29. Gary Jacobsohn, "The Permeability of Constitutional Borders," *Texas Law Review* 82 (2004): 1763-1818.

The Impact of Constitutional Jurisprudence (week 9-10)

30. Patricia Williams, *The Alchemy of Race and Rights* (Harvard University Press, 1991), pp. 146-165.

31. Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard University Press, 2004), pp. 100-148.

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34. Charles Epp, "Do Bills of Rights Matter? The Canadian Charter of Rights and Freedoms?" *American Journal of Political Science* 90 (1996): 765-779.

35. Gerald Rosenberg, "Substituting Symbol for Substance: What Did *Brown* Really Accomplish?" *Political Science and Politics* 37 (2004): 205-209.

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39. Richard Pildes, "The Supreme Court, 2003 Term – Foreword: The Constitutionalization of Democratic Politics," *Harvard Law Review* 118 (2004): 29-41.

Constitutionalism vs. Democracy I: "The Dialogue Thesis" (week 11)

40. Kent Roach, *The Supreme Court on Trial: Judicial Activism and Democratic Dialogue* (Irwin Law, 2001), 239-296.

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Constitutionalism vs. Democracy II: "Supra-National Constitutionalism" (week 12)

43. Ran Hirschl, "Preserving Hegemony? Assessing the Political Origins of the EU Constitution," *International Journal of Constitutional Law* 3 (2005): 269-292.

44. Stephen Clarkson, "Locked In? Canada's External Constitution under Global Trade Governance," *American Journal of Canadian Studies* (Summer 2003): 145-172.

45. David Schneiderman, "Investment Rules and the New Constitutionalism," Law & *Social Inquiry* 25 (2000): 757-787.

46. Susan Esserman and Robert Howse "The WTO on Trial," *Foreign Affairs* 82 (2003): 130-135.